

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
ABILENE DIVISION

JUAN MANUEL ALBARADO,  
(TDCJ # 01452106),

Plaintiff,

v.

CITY OF ABILENE, TEXAS *et al.*,

Defendants.

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CIVIL ACTION NO.  
1:15-CV-220-P-BL

**ORDER ACCEPTING FINDINGS AND RECOMMENDATION**  
**OF THE UNITED STATES MAGISTRATE JUDGE**

Now pending before the Court is the March 18, 2016 Findings, Conclusions and Recommendation of the United States Magistrate Judge to dismiss this case. Although the time to file objections has passed without Plaintiff filing written objections, the Court notes that Plaintiff has filed two motions. The Court will address the motions, and alternatively consider the motions as written objections to the Magistrate Judge's report.

Plaintiff Juan Manuel Albarado filed a motion for jury trial, asking the Court to provide him a jury trial on his claims that he is the victim of a conspiracy to intentionally deprive him of his constitutional rights. (doc. 19.) He also moves for this Court to order a bench warrant to bring him to Court for preliminary proceedings. (doc. 20.) But, Plaintiff does not respond to or contest the magistrate judge's findings and conclusions that even if his factual claims asserted in his complaint are assumed to be true, this action is not cognizable at this time under the doctrine of *Heck v. Humphrey*, 512 U.S. 477 (1994). As such, he is not entitled to a jury trial and there is no basis to bring him to Court for a hearing. The motions must be denied.

Furthermore, after reviewing the motions, construed as objections to the Findings, Conclusions, and Recommendation of the United States Magistrate Judge and conducting a *de novo*


review of those parts of the magistrate judge's report to which objections have been made, the Court is of the opinion that the Findings and Conclusions of the Magistrate Judge are accepted as the Findings and Conclusions of the Court.

It is therefore **ORDERED** that the motion for jury trial (doc. 19) and the motion for bench warrant (doc. 20) are **DENIED**.

It is further **ORDERED** that for the reasons stated in the Findings, Conclusions and Recommendation of the United States Magistrate Judge, Plaintiff's motion for leave to amend (doc. 16) is **DENIED**; and all Plaintiff's claims are **DISMISSED WITH PREJUDICE** until the *Heck v. Humphrey* conditions are met,<sup>1</sup> pursuant to 28 U.S.C. § 1915A(b)(1) and 28 U.S.C. § 1915(e)(2)(B)(i) and (ii). This dismissal counts as a "strike" or "prior occasion" within the meaning 28 U.S.C. § 1915(g).

If the plaintiff files a notice of appeal, he must pay the \$505.00 appellate filing fee or submit a motion to proceed *in forma pauperis* and a properly signed certificate of inmate trust account.

**SIGNED this 19th day of April, 2016.**

  
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**JORGE A. SOLIS**  
**UNITED STATES DISTRICT JUDGE**

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<sup>1</sup> See *Johnson v. McElveen*, 101 F.3d 423, 424 (5th Cir. 1996).